

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA R BRECHT
Claimant

SHACHINDRA BAHADUR DDS PC
Employer

APPEAL 21A-UI-15383-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/28/21
Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 6, 2021 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective March 28, 2021 as she was on a voluntary leave of absence from work. The parties were properly notified of the hearing. A telephone hearing was held on August 31, 2021. The claimant participated personally. The employer participated through witnesses Jessica Harmony and Kimberly O'Connor. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer as a full-time dental assistant on December 23, 2019. She filed an original claim for unemployment insurance benefits effective March 28, 2021. From March 28, 2021 through April 10, 2021, the claimant was unable to work because she tested positive for COVID-19. She was instructed by her medical provider to quarantine and recover for the two-week period she was off of work. Claimant returned to her regular full-time position after April 10, 2021. Claimant's separation from employment occurred in June of 2021. She filed an additional claim for unemployment insurance benefits effective June 6, 2021. Claimant has been able to and available for full-time work since her separation from employment with this employer and the last weekly-continued claim she filed, which was for the week-ending July 3, 2021.

Claimant filed an application for Federal Pandemic Unemployment Assistance (PUA) benefits in April of 2021, submission number 96610. No decision has yet been made regarding claimant's eligibility for PUA benefits. That matter is remanded to the Benefits Bureau for an initial investigation and determination regarding claimant's eligibility for PUA benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since,

under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The burden is on the claimant to establish that he is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. Because the claimant was ill with COVID 19 from March 28, 2021 through April 10, 2021, she was not able to and available for work due to illness. As such, regular unemployment insurance benefits funded by the State of Iowa are denied effective March 28, 2021 through April 10, 2021 due to the claimant not being able to work due to illness.

After April 10, 2021, claimant returned to her regular full-time employment and was not otherwise available for full-time work until her separation from employment occurred. At that time, effective June 6, 2021, the claimant was able to and available for full-time work. As such, benefits are allowed effective June 6, 2021 as the claimant was able to and available for full-time work, and provided the claimant remained otherwise eligible.

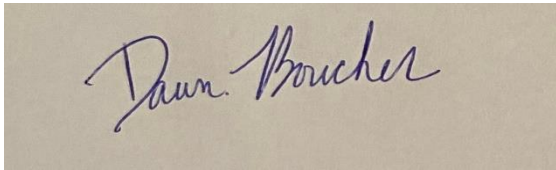
DECISION:

The July 6, 2021 (reference 02) unemployment insurance decision is modified in favor of the claimant. The claimant was not able to work or available for work effective March 28, 2021 through April 10, 2021 due to her illness with COVID-19. Claimant was then back working full-time and not able to and available for other full-time work. Regular unemployment insurance benefits are denied from March 28, 2021 through June 5, 2021 as the claimant was not able to and available for work.

Regular unemployment insurance benefits are allowed effective June 6, 2021 as the claimant established she was able to and available for work as of that date, provided the claimant is found to be otherwise eligible.

REMAND:

The issue of whether the claimant is eligible for PUA benefits effective March 28, 2021 is remanded to the Benefits Bureau for an initial investigation and determination regarding her PUA claim submission number 96610.



Dawn Boucher
Administrative Law Judge

September 7, 2021
Decision Dated and Mailed

db/mh